NO. 82-1720

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

Anthony J. Bucci, Petitioner

v.

Lloyd Griffin, Jr., individually and as a member and representative of the Tenth Ward Democratic Committee, Dorothy Kashk, Mary Mahar, each individually and on behalf of all persons similarly situated, Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

Anthony J. Bucci
524 Howard Building
Providence, Rhode Island
(401)272-6677

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Questions Presented

1. A. Does the substantial public interest in resolving the conflict of authority from the Federal District Court of Rhode Island and the highest State Court in Rhode Island as to whether a re-districting statute violated First Amendment rights of freedom of association by providing that the existing ward committees shall not exercise any powers of nomination or endorsement and, in turn, authorized the Chairman of the City Committee of each political party to make interim appointments to said committee, render the entire case reviewable on the merits even if some issues are moot by the self-terminating nature of the statute?

   B. In light of the above, does the substantial public interest in providing guidance to the state legislatures and public at large save this case from mootness?

2. Does the possibility of an attorney's fee award against a defendant who did not prevail in a 42 USC §1983 civil rights action save the constitutional question from mootness when the award of the attorney's fee hinges upon the determination as to whether the statute in question did, in fact, violate plaintiff's constitutional rights and, hence, give the defendant a financial stake in the decision of the case on the merits of the constitutional issue?

3. Does the doctrine of "capable of repetition yet evading review," apply to election statutes, such as S2721, which are self-terminating by the upcoming election and, hence, save the case from mootness?

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The Order of United States Court of Appeals for the First Circuit entered October 29, 1982, motion for rehearing denied December 9, 1982, and the opinion of the United States District Court for the District of Rhode Island are set out in Appendix hereto.

Jurisdiction

This action based on the Rhode Island legislature's enactment of S2721 providing a method for interim appointments to local ward committees to remedy the problem of reapportionment draws into question the validity of S2721 on the grounds that the appointment of interim ward members violates the First Amendment guarantees of freedom of association. The statute allowed the City Chairmen of each City to appoint the interim members.

The federal constitutional question was decided by the United States District Court for the District of Rhode Island and was timely

appealed by Petitioner, Bucci, to the Court of Appeals for the First Circuit. The Court of Appeals on October 29, 1982 ordered the judgment of the District Court vacated and remanded to the District Court with instructions to dismiss the action as moot.

A timely motion for rehearing, filed by Petitioner, Bucci, on November 12, 1982 was denied by the Court of Appeals on December 1, 1982. The mandate for the order denying the rehearing was issued December 9, 1982.

The jurisdiction of the United States Supreme Court to review this decision by the Court of Appeals of the First Circuit by certiorari is conferred by 28 USC 1254(1) and 28 USC 2101(c).

Constitutional Provisions

Article III of the United States Constitution is set out in full in the Appendix hereto. In relevant part, Article III, Section 2 of the United States Constitution provides as follows:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and

> Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

The First Amendment to the Constitution of the United States provides as follows:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Statutory Provisions

Senate Bill 2721 is set out in full in the Appendix attached hereto.

P.L. 1970, ch 35 is set out in full in the Appendix attached hereto.

Statement of Case

This is a Petition for Certiorari from consolidated cases challenging the constitutionality of S2721, which the Rhode Island General Assembly enacted on May 18, 1982. The statute at issue authorized the City Chairman of each political party, in each City, to make interim appointments for ward committees to remedy the effects of reapportionment.

Prior to redistricting the City of Providence had 13 wards. As a result of the Providence Home Rule Charter and severe population shifts within the existing wards, the City of Providence was redistricted into 15 wards. The constitutionally mandated reapportionment radically changed the composition of most wards, both in terms of population and geographics. Consequently, the existing ward committees elected in the 1978 primary were not representative of the wards as they existed after reapportionment. Quite simply, they were elected to represent wards that no

longer existed. Therefore, S2721 was enacted to allow for the interim appointment of ward committees by the City Chairman of each party, in each City. It should be noted that S2721 is substantially identical to PL 1970 Ch 35 which was passed by the Rhode Island legislature in 1970 to remedy the effects of the constitutionally mandated reapportionment of the wards which was unaccompanied by the enactment of a home rule charter.

Ward committees are elected every four (4) years during the September primaries. The basic function of a ward committee is to endorse candidates for City Council. It is the responsibility of the City Committee, which is composed of the various ward committees, to endorse a candidate for Mayor. Endorsed candidates must then run in the party primaries held in September to obtain the party nomination.

Plaintiffs-Appellees primarily challenged the constitutionality of S2721 as infringing their First Amendment rights to associate for political purposes and also as infringing on the internal processes of a political party.

Appellees brought suit in the Rhode Island Federal District Court and sought both a Temporary Restraining Order and a permanent injunction barring the Defendant-Appellant, Bucci, who is the Democratic City Chairman of Providence, from making any appointments pursuant to S2721. On June 9, 1982, the District Court issued a Temporary Restraining Order enjoining the Petitioner from making appointments pursuant to S2721. The order applied to all wards. On June 12, 1982, the incumbent Democratic City Committee met and authorized the Appellant to fill any vacancies in the various ward committees resulting from the reapportionment of the wards and ward committees of the City of Providence or where any vacancy exists for any other reason. The City Committee also authorized the Petitioner, Bucci, to act on behalf of the City Committee of the City of Providence and in its place and stead, on any matter, in all respects, when the City Committee is not in session. The ward and City Committees then endorsed candidates and filed the endorsements with the Providence Board of Canvassers. On July 26, 1982 the Federal

District Court declared S2721 unconstitutional and permanently enjoined Petitioner from making any appointments pursuant to said statute. On July 28, 1982 the Respondents submitted a proposed judgment seeking attorney fees from the Petitioner. On July 29, 1982 Justice Pettine signed the proposed judgment submitted by Respondents (Appendix A4.1). On September 3, 1982, Petitioner, Bucci, appealed the District Court's decision to the Court of Appeals of the First Circuit.

On September 14, 1982, the September primaries were held. On September 23, 1982, Respondents filed with the Court of Appeals a suggestion of mootness on the grounds that the parties rank and file nominated candidates for City office to run in the general election, and elected new ward committees. Respondent further argued that S2721 expired by its own terms after the September primaries. Petitioner strongly contends that the instant action is not moot.

Petitioner was under the mistaken impression that the Court of Appeals would first

rule on Respondent's Motion for a Stay pending determination of Respondent's suggestion of mootness before deciding the issue of mootness itself and, therefore, did not respond to Respondent's motion since Petitioner did not wish to object to their Motion for a Stay. Subsequently, on October 29, 1982 the Court of Appeals vacated the District Court's judgment and remanded the case back to the District Court with instructions to dismiss the case as moot. Thereafter, Petitioner petitioned the former Court for a rehearing on the issue of mootness. On December 1, 1982, the Court of Appeals entered an order denying Petitioner's petition for a rehearing. The mandate of said order was issued December 9, 1982.

Petitioner, Bucci, now comes before this Honorable Court urging said Court to grant him a Writ of Certiorari in order to determine whether the issues presented in the above entitled case are, indeed, moot.

Questions Presented Are Substantial

I

This case presents several important issues regarding the mootness of this action as a result of the occurrence of the September primary election. The questions before this Honorable Court merit full briefing and plenary review because of the significant public interest surrounding this action, along with the serious practical effects of the decisions below. If the Court of Appeals decision of mootness is allowed to stand (Appendix p. A1), havoc will be created in the law regarding the constitutionality of a statute, such as S2721 and the constitutional rights of the people affected by the statute.

The questions presented herein regarding mootness are substantial in that it is a vital interest of public concern to know for certain whether their constitutional rights have been violated or whether public officials have followed the constitutioanal guidelines prescribed under the United States Constitution.

Election matters undoubtedly encompass the public interest. The matter at hand involves the Rhode Island legislature's attempt to devise a viable method for interim appointments to the respective City Committees in order to effectively deal with the problems caused by reapportionment of the wards. The legislature in managing this problem logically decided to enact a statute which had passed constitutional muster in 1970. See Aiello v. LaFrance, CA No. 70-1814 (Prov. Superior Ct. 1970). Actually, the Federal District Court of Rhode Island in Fahey v. Darigan, 405 F Supp 1386 (1975) inferred that the decision in Aiello was correct because there was a compelling state interest in enacting such a statute. The latter suggested the Federal Court's willingness to uphold a statute such as S2721 under the circumstances of reapportionment. Moreover, just two weeks prior to the decision by the Federal District Court in this case, (i.e., Griffin v. Bucci, Appendix p. A3.1). Rhode Island Supreme Court in Gosz v. Quattrocchi, 4 RIAS 237 (1982), held that a

statute identical to S2721 but dealing with district committees on the State level was constitutional. The conflict between the two Courts is irreconcilable. The erroneous ruling by the Court of Appeals as to the case's mootness, in effect, leaves two divergent views on record regarding the statute's constitutionality. The fact that the Court of Appeals vacated the judgment by the Federal District Court does not alleviate the substantial problem of the highest State Court and Federal Court being in complete disagreement. Attorneys, at some future date, will use the Federal District Court's opinion in Griffin v. Bucci (Appendix p. A3.1) to demonstrate the Federal Court's willingness to strike down a statute such as S2721 as unconstitutional. It is very important for this Court to grant certiorari in this case in order to open the door for this conflict to be reconciled by the United States Court of Appeals.

The public is now faced with a "guessing game" as to the statute's constitutionality. When succeeding legislatures decide to use the

same method here under review, they will most likely be barred from doing so based on the Federal District Court's decision in Griffin v. Bucci (Appendix p. A3.1). However, they will be precluded from bringing the matter to Court for an appellate determination since after the primaries it would again be argued that the case is moot. The latter, in effect, will unfairly bar this important constitutional issue from ever being decided by an Appellate Court. For this Honorable Court to deny certiorari and permit the Court of Appeal's decision of mootness to stand would be to create the ultimate catch 22 from which there is no escape. Certainly this should never be made to happen with a constitutional issue as significant as the one involved. The instant case involves election laws which our entire democratic system is based upon and which also deals with the fundamental First Amendment constitutional rights of the parties and, indirectly, the public at large. The public deserves to know if their constitutional

rights have been violated and public officials and the like should be made cognizant of their acts which would deprive the public of any of their constitutional rights guaranteed by the United States Constitution.

Dier consequences would result if this Petition was denied certiorari (and if this case was found to be moot). The United States Supreme Court would be foreclosing the Rhode Island legislatures and, perhaps, other legislatures from even considering the constitutionally sound method of interim appointments (see Rodriquez v. Democratic Party, -US-, 102 SCt, 72 LEd 2d 628 (1982)) of ward committees or other political committees (see Gosz v. Quattrocchi) to remedy the effects of reapportionment. The foreclosure of valid options open to the legislature while dealing with important election matters is clearly against the public interest. Furthermore, it is a well established rule that an Appellate Court may retain an appeal for hearing and determination if it involves a question of

public interest, even though it has become moot so far as the particular action or parties are concerned. Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 US 498, 515 (1911) 55 LEd 310; US v. W.T. Grant Co., 345 US 629 (1953), 73 SCt 894, 97 LEd 2d 917.

The questions presented for review, thus, are substantial since by the inherent nature of the issues presented the issues will almost always be rendered moot by a subsequent election. The issues are not likely to survive the course of a normal trial and/or appellate review, inasmuch as the judicial process will almost certainly continue well beyond a primary election. Therefore, it is in the public's best interest that this Honorable Court review the questions presented herein and grant certiorari.

II

Review by this Court is also merited as a result of the Court of Appeals error in not applying the exception to the doctrine of

mootness, namely, the "capable of repetition, yet evading review doctrine." Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 US 498, 515 (1911) 55 LEd 310. Respondents distorted the facts by inferring that S2721 was enacted as a result of the Providence Home Rule Charter of 1980 coupled with reapportionment of the wards. Respondent incorrectly attempted to infer that since the adoption of another home rule charter is unlikely, the enactment of a statute similar to S2721 is equally unlikely, and, therefore, the case presently before this Court is moot. The truth is that a statute almost identical to S2721 was enacted in Rhode Island in 1970 by PL 1970, ch. 35 (see Appendix p. A6.1) to deal solely with reapportionment of the wards unaccompanied by any enactment of a home rule charter. Redistricting or reapportionment of the kind that precipitated the passage of S2721 is constitutionally mandated every 10 years. It is an unquestionable fact that Rhode Island twice adopted the approach of interim appointments of ward committees to

effectively deal with the problems caused by reapportionment of the wards. Therefore, the chance of repetition is great since almost identical statutes were enacted twice in a row. The Rhode Island legislature, no doubt, agrees that the appointment of interim ward committees is both a desirable and viable method of coping with reapportionment as it relates to ward committees (and other political committees, see Gosz, supra). S2721 was enacted to remedy a situation wherein members of the ward committees were elected to represent wards that no longer exist or that they no longer live in, by virtue of the constitutional mandate of reapportionment. This effect of reapportionment is almost unavoidable and, hence, it is almost assured that the legislature will adopt a method to deal with redistricting that is identical to or at the very least very similar to S2721. Consequently, the issues presented herein merit plenary review by this Court as the Court of Appeals summarily dismissed the instant case as moot, without regard to the

United States Supreme Court's recognition of the doctrine of "capable of repetition, yet evading review." In addition, the public's need to be well informed as to their First Amendment rights warrants the grant of certiorari. If this Honorable Court denies a grant of certiorari it will be responsible for perpetuating the "guessing game" (see p. 11 supra) with regard to the public's knowledge of their constitutional rights affected by S2721. Mootness should never perpetually frustrate "the vital importance of keeping open avenues of review." Sibron v. NY, 392 US 40, 52 (1968), 88 SCt 1889, 20 LEd 2d 917. As it stands presently, the public is confronted with a road block. Petitioner urges this Court to lift the road block and, in turn, knock down the blockade in order to announce the proper development of the law in this area.

III

The issue of whether the possiblity of attorney fees saves an entire case from mootness

is important and substantial since this Honorable Court has never specifically ruled on this matter. It deserves to be settled by this Court.

The issues presented herein are also of substantial weight since the Court of Appeals deviated from standard principles established by this Court. Petitioner submits that this case should not have been dismissed as moot inasmuch as Petitioner still has a personal stake in the outcome of this action. The decision in Memphis Light v. Craft, (436 US 1) (1978), specifically held that respondent's claim for actual and punitive damages arising from the possible constitutional violation saved the case from mootness. This Honorable Court has also repeatedly held that where the parties to a suit have a financial stake in the outcome of pending legislation that hinges on a federal question, the case is not moot and the federal question in turn will be decided. Liner v. Jafco, 375 US 301, 84 SCt 391,

11 LEd 2d 347 (1964); Powell v. McCormack, 395 US 486, 89 SCt 1944, 23 LEd 2d 491 (1969); American Party of Texas v. White, 415 US 769, 94 SCt 14, 50 LEd 2d 56 (1976). An action for attorney fees by Respondent, Griffin, against Petitioner, Bucci, is now pending in the Rhode Island Federal District Court. Petitioner submits that the award of attorney fees is analogous to an award of actual and/or punitive damages and, therefore, Petitioner does have a substantial financial stake in the determination of this case on the merits. Also, the Rhode Island Federal District Court's opinion (see Appendix p. A3.1) is void of any discussion as to whether Mr. Bucci, in his individual and official capacity, ever violated Respondent's First Amendment constitutional rights. The District Court merely held that the statute was unconstitutional. Logic would dictate that before attorney fees can be assessed against Petitioner, a determination must be made as to whether Petitioner, Bucci, in fact, did violate Respondent's rights. As in

Liner v. Jafco, supra p. 18, the question of whether Petitioner must pay Respondent's attorney fees turns almost exclusively on the answer to the federal question of whether S2721 violated Respondent's First Amendment right of freedom to associate. If the Court of Appeals reviews the instant case on the merits and holds that S2721 does not violate Petitioner's First Amendment rights, the issue of attorney fees will be completely wiped out. Only a prevailing party in a §1983 civil rights action is entitled to attorney fees. Thus, even if the issues involving the constitutionality of the statute are moot, they must be reviewed inasmuch as the possibility of the award of attorney fees to the prevailing party saves the case from mootness. It would be a mockery of justice to award attorney fees against a party who has no avenue for appellate review for the purpose of testing the trial court's adverse determination of the merits of the case. The latter is wholly inequitable and flies in the face of the democratic principles of

fairness that are so well established in our society and the judicial system itself. The question of whether the financial stake in the award of attorney fees saves the entire case from mootness must be settled by this Court, especially since the 42 USC §1983 action is a significant issue that clearly encompasses the public's interest.

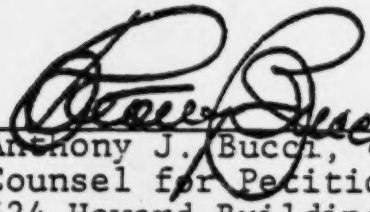
Conclusion

In any event, Appellant has demonstrated that the issues involved herein are of such important magnitude and capable of repetition yet evading review that this Petition for Certiorari should be granted so that present and future legislatures would have some uniform guidelines by which to enact important legislation dealing with election matters. More importantly, if the public is not able to ascertain what acts infringe upon their constitutional rights because cases such as the one at hand are rendered moot by appeal courts, the public will lose faith in the judicial system. If this Petition

is denied, this Court will be supplying the rationale that will be used in the future to effectively bar these very important constitutional issues from being decided by an Appellate Court for all time. The "guessing game" regarding statutes identical or similar to S2721 will perpetually flourish if this Court does not grant this Petition for Certiorari.

Respectfully submitted,

BUCCI, BUCCI and BUCCI
By



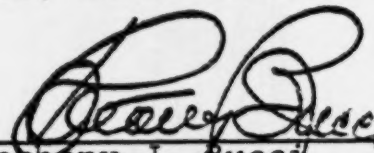
Anthony J. Bucci,
Counsel for Petitioner
524 Howard Building
Providence, Rhode Island
(401) 272-6677
DATED: February 25, 1983

Certification

I, Anthony J. Bucci, attorney for Anthony J. Bucci, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 25th day of February, 1983, I served copies of the foregoing Petition for Certiorari on the several parties thereto, as follows:

1. John M. Roney, Esquire
   344 Wickenden Street
   Providence, Rhode Island

2. Thomas Connors, Esquire
   Connors & Kilguss
   75 Weybosset Street
   Providence, Rhode Island



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APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

NO. 82-1606.

LLOYD T. GRIFFIN, JR., ET AL.,
Plaintiffs, Appellees,

v.

ANTHONY J. BUCCI,
Defendant, Appellant.

BEFORE COFFIN, Chief Judge,
CAMPBELL AND BOWNES, Circuit Judges.

ORDER OF COURT

Entered October 29, 1982

The judgment of the district court is vacated and the case remanded to the district court with instructions to dismiss the action as moot. Crowell v. Mader, 444 U.S. 505 (1980).

By the Court:

/s/ Dana H. Gallup

Clerk.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NO. 82-1606.

LLOYD T. GRIFFIN, JR., ET AL.,
Plaintiffs, Appellees,

v.

ANTHONY J. BUCCI,
Defendant, Appellant.

BEFORE COFFIN, Chief Judge,
CAMPBELL AND BOWNES, Circuit Judges.

ORDER OF COURT

Entered December 1, 1982

Appellant's petition for rehearing is denied.

By the Court:

DANA H. GALLUP, CLERK.

By /s/Francis P. Scigliano
Chief Deputy Clerk

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF RHODE ISLAND

LLOYD T. GRIFFIN, JR., et al.	)	
	)	
v.	)	C.A. NO. 82-0358P
	)	
ANTHONY J. BUCCI, et al.	)	
LEONARD E. WALKER, et al.	)	
	)	
v.	)	C.A. NO. 82-0368P
	)	
ANTHONY J. BUCCI, et al.	)	
JOHN HUNTLEY, et al.	)	
	)	
v.	)	C.A. NO. 82-0383P
	)	
JOSEPH C. Di SANTO, et al.	)	

OPINION AND ORDER

PETTINE, Senior Judge. These three consolidated cases challenge the constitutionality of S2721, which the Rhode Island General Assembly enacted on May 18, 1982. This statute provides that the members of the ward committees in the City of Providence in office on the effective date of the statute may no longer nominate or endorse candidates for Providence city council or mayor. Furthermore S2721 requires the chairmen of the city committees

of each political party to "appoint the members of a ward committee for each of the several wards of the City of Providence."[1] Thus, the overall effect of S2721 is to unseat the incumbent ward committeemen and replace them with persons handpicked by the political leaders of each party. Plaintiffs claim that this statute violates their First Amendment rights of political association.[2]

The parties in these three consolidated cases are as follows. In Griffin v. Bucci, the plaintiffs are all Democrats residing in the tenth ward in Providence. Each cast votes for the current Democratic tenth ward committee members in the 1978 Democratic primary election, in which the present Democratic ward committees were elected. In addition, plaintiff Griffin is a member of the current Democratic tenth ward committee, although he was not elected in 1978, but was later appointed to the position by the ward committee to fill a vacancy. Finally, the defendants in Griffin v. Bucci consist of the chairman of the Democratic city committee

and the members of the Providence Board of Canvassers.

The plaintiffs in Walker v. Bucci reside in the tenth and eleventh wards in Providence. Each cast votes in the 1978 Democratic primary election. In addition, four of the plaintiffs are tenth ward committee members. Two of these plaintiffs were elected to the ward committee in 1978, and two were later appointed to fill vacancies. One of the plaintiffs was elected to the Democratic eleventh ward committee in 1978. Finally, the principal defendant in Walker v. Bucci is the chairman of the Democratic city committee.

The Huntley v. DiSanto case is brought by incumbent members of the Republican third ward committee in Providence. Some of these committeemen were elected in the 1978 Republican primary, and some were appointed. Five of the Huntley plaintiffs allege in their

complaint that they voted in the 1978 primary for incumbent members of the Republican third ward committee. The defendants in Huntley v. DiSanto consist of the Republican City Committee chairman, those persons whom the chairman has newly appointed to the Republican third ward committee pursuant to S2721, and the members of the Providence Board of Canvassers.[3/]

All the plaintiffs request both injunctive and declaratory relief pursuant to 42 U.S.C. §1983 and 28 U.S.C. §§2201,2202. Subject matter jurisdiction over the federal claims is founded on 28 U.S.C. §§1331, 1343(a)(3). The plaintiffs in Griffin and Walker seek a permanent injunction prohibiting the implementation of S2721 in any Democratic ward in Providence. The complaint in Huntley, however, seeks injunctive relief only as to the Republican third ward committee, for which new appointments have already been made by the Republican City Committee chairman. See

Complaint at 7-8. After a full trial on the merits, and for the reasons that follow, the Court finds that S2721 is unconstitutional.

FACTS

Prior to 1980, the City of Providence was divided into thirteen wards. From testimony given at trial, it appears that the primary function of the ward committees in each ward is to endorse candidates for positions on the city council and on future ward committees. Each ward has both a Republican and a Democratic ward committee. Members of these committees are elected every four years at primary elections conducted by each party. R.I.Gen. Laws §§17-12-6, 17-15-7. The members of all ward committees of a particular party together comprise the party's city committee. Testimony at trial revealed that a major function of a party's city committee is to endorse a candidate for mayor in the City of Providence. The last primary elections in

which ward committee members for each party were elected occurred in September 1978.

Pursuant to the Providence Home Rule Charter of 1980, the City of Providence increased the number of wards from thirteen to fifteen and attempted to equalize the population within each ward. As a result of such "reapportionment", the boundary lines of each ward were redrawn. After the reapportionment, several Providence residents, including some ward committeemen, no longer lived in the wards in which they had resided previously. For example, John Huntley, who was re-elected to the Republican third ward committee in 1978, testified at trial that one Republican third ward committee member was reapportioned out of the ward. Although no incumbent Democratic committeemen were reapportioned out of wards one, three, ten, and eleven, wards two, four, six, eight, and twelve lost one Democratic committee person each. Affidavit of Kenneth E. Snowden, Pls.' Ex. i9. Three Democratic committeemen

were reapportioned out of wards seven and nine, and the fifth ward lost seven Democratic committee members, the most in any ward. Id. Furthermore, almost every ward experienced large population shifts. For example, 1269 new residents were added to ward ten, and 3028 were added to ward eleven. Id. Ward twelve lost 2482 former residents, but received 3044 new residents. Id. The average population loss from each of the thirteen wards was 21%, with losses ranging from 0% to 43.8% per ward. See id. However, despite these changes, the majority of residents in all reapportioned wards resided in the same wards prior to reapportionment, and most Providence residents continued to reside in the same wards after reapportionment. See id.

Apparently in response to this reapportionment and to the vacancies it created on certain ward committees, the General Assembly passed S2721. Pursuant to this statute, the chairman of the Republican city committee appointed members for the

fifteen Republican committees in Providence.

Only one of the former Republican third ward committee members was appointed to the "new" committee. The members of the "new" Republican ward committees have filed their endorsements for ward committee and city council with the Board of Canvassers, as required by R.I. Gen.Laws §17-12-11. In addition, John Huntley testified that the "old" third ward committee has also filed its endorsement for the office of city councilman with the Board of Canvassers.

Because this Court on June 9, 1982 temporarily enjoined implementation of S2721 as to the Democratic ward committees, the Democratic city committee chairman has not made any appointments pursuant to the statute. Lloyd Griffin, a member of the Democratic tenth ward committee, testified at trial that the Democratic city committee voted on June 12, 1982 to give the city committee chairman the power to appoint committee members for the newly-created

fourteenth and fifteenth wards, and to fill vacancies caused by reapportionment in the original thirteen ward committees. See Pls.' Ex. 20 (resolution voted on by city committee). These ward committees have filed endorsements for ward committee, mayor, and city council with the Providence Board of Canvassers.

DISCUSSION

I. ABSTENTION

While this opinion was being written, the Rhode Island Supreme Court issued an opinion in the case of Gosz v. Quattrochi, No. 82-267 (R.I. July 15, 1982). Gosz involved a federal constitutional challenge to H7876, recently passed by the Rhode Island legislature. H7876 is a response to the recent redistricting of representative and senatorial districts in Rhode Island. The statute essentialy unseats the incumbent district committees, whose principal function is to endorse candidates for state representative and state senator, and empowers the

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chairmen of the state committees of each political party to appoint new committees for each party in each district. These new committeemen will endorse candidates for the state legislature. In short, H7876 is almost identical to S2721, except that it deals with state district committees and S2721 deals with local ward committees. The plaintiffs in Gosz, duly elected members of the Democratic Thirteenth Representative District, argued that H7876 violated their First Amendment rights of political association.

The Rhode Island Supreme Court, however, did not agree. The court in Gosz held that H7876 was "not inconsistent with any rule of the Democratic Party" and, therefore, did not significantly "burden...the associational interests of the plaintiffs and other members of the Democratic Party." Gosz v. Quattrochi, No. 82-267, slip.op. at 7,10. Furthermore, the Court held that, assuming H7876 did significantly interfere with protected associational interest, the

statute served a compelling state interest in the manner least intrusive on First Amendment rights. The Court stated that "the Rhode Island legislature, having enacted a reapportionment statute relating to 100 representative districts, found it necessary to adopt an interim appointment procedure in order to ensure that representative district committees could function in an orderly fashion in preparation for the November 1982 election." Id. at 9. Furthermore, the court noted that "the population and geography of the new districts [was] so significantly changed that the representation of the former district committee members [was], in the legislative judgment, inadequate." Id. Thus, the Court found compelling the state's interest in orderly elections and truly representative political committees. The court therefore refused to invalidate H7876 on First Amendment grounds.

This Court recognizes that its opinion in the three consolidated cases now before it

and the Supreme Court's decision in Gosz apparently conflict. Despite the fact that S2721 may not be inconsistent with any valid, formal by-law of the Providence political parties, this Court has nonetheless found that the statute significantly burdens plaintiffs' associational interests in the integrity of party processes. See pp.15-17 infra. Furthermore, in contrast to the Supreme Court's conclusion as to H7876, this Court has determined that S2721 does not serve a compelling state interest in the least intrusive manner. See pp.17-20. infra.

The Court wishes to say that it is sensitive to the delicate relationship between the federal courts and the state judiciary on matters of constitutional law. Moreover, this Court is aware that its decision today may strain that relationship somewhat because of the ostensibly different views that this Court and the Rhode Island Supreme Court have taken on highly similar constitutional

issues. Had it been possible for this Court to stay its hand and to direct the resolution of the constitutional challenges before it to the state courts, it would have done so, given the state's intimate interest in matters of election law. However, it was this Court's solemn constitutional duty to render this opinion today and to determine what it perceives to be the correct reading of the Constitution.

The only way in which this Court could avoid issuing this opinion, and thus avoid conflicting with the Rhode Island Supreme Court, would be to invoke the abstention doctrine. However, the three recognized bases of federal judicial abstention do not support abstaining in these three consolidated suits. See generally Colorado River Water Conserv. District v. United States, 424 U.S. 800, 813-17 (1976). First, abstention is not possible under Railroad Comm'n of Texas v. Pullman Co., 312 U.S. 496 (1941). Pullman abstention is appropriate where state court

resolution of unsettled state law issues can make resolution of federal constitutional questions unnecessary. See Colorado River Water Conserv. District v. United States, supra, at 814. Such is not the case here.

Second, Burdord v. Sun Oil Co., 319 U.S. 315 (1943), and Alabama Pub. Serv. Comm'n v. Southern Ry., 341 U.S. 341 (1951), do not provide a basis for abstention because these consolidated cases "have [not]... presented difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case[s] at bar." Colorado River Water Conserv. District v. United States, supra, at 814. Burford involved a federal constitutional challenge in the context of a complex state regulatory scheme where the possibility of misunderstanding state law was significant. Alabama Public Serv. Comm'n dealt with a constitutional challenge to confiscation of property by the state in a matter of intensely local concern.

Third, because there is no ongoing state judicial proceeding involving the parties in these three consolidated suits, abstention is not possible under Younger v. Harris, 401 U.S. 37 (1971). See Middlesex County Ethics Committee v. Garden State Bar Ass'n, 50 U.S.L.W. 4712, 4714 (U.S. June 21, 1982) (although Younger involved an action to restrain a state criminal prosecution, policies of Younger abstention also apply where there is an ongoing state civil proceeding in which parties have opportunity to raise constitutional issues).

Finally, the Court has even considered whether abstention is possible under the "principle of comity" that the Supreme Court invoked in Fair Assessment in Real Estate Ass'n, Inc. v. McNary, 102 S.Ct. 177 (1981). In Fair Assessment, the Supreme Court held that comity bars a federal court from declaring unconstitutional a state's administration of its tax laws. Relying on a line of precedents that traced back to Great Lakes

Dredge & Dock Co. v. Huffman, 319 U.S. 293 (1943), the Court held that comity forbade such declaratory judgments because of their disruptive effect on the collection of state taxes.

This Court finds that Fair Assessment does not supply a basis for abstention. Fair Assessment, and the cases on which it relies, deal with actions to enjoin the collection of state taxes, or to declare state tax laws or their administration unconstitutional. This Court thus does not believe that Fair Assessment and its predecessors can fairly be read to mandate or authorize abstention in the three election law cases now before the Court.

In sum, the Court would have preferred to avoid the ostensible conflict between the Rhode Island Supreme Court's decision in Gosz and this Court's decision today. However, this Court was bound, under Article III of the United States Constitution, to adjudicate the constitutional rights of the parties before it. See Colorado River Water Conserv.

District v. United States, 424 U.S. at 813 ("The doctrine of abstention...is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it."). Ct. id. at 816 ("The mere potential for conflict in the results of adjudications, does not, without more, warrant staying exercise of federal jurisdiction.").

The Court does, however, take solace in the fact that such apparent conflict between the state and federal courts will have little practical effect on the state of Rhode Island, or on the City of Providence. This Court's opinion today and the opinion in Gosz involve different statutes, different geographical areas, and different aspects of political party activity. This Court's opinion and the decision in Gosz will not subject any persons to conflicting legal obligations. Finally, this Court's decision today, affecting only Providence, should not disrupt the state electoral process.

II. STATE ACTION

Defendants argue that plaintiffs' First Amendment associational rights have not been violated because no "state action" is present in these three consolidated cases. The city committee chairmen emphasize that S2721 does not require them to appoint persons other than incumbent ward committeemen to the "new" committees, but merely gives them "discretion" to do so. Thus, they argue, replacement of an incumbent with a newly appointed committee member would not constitute "state action", but would merely be a purely private, intra-party decision.

Defendants correctly point out that the First Amendment right of political association affords protection only against interference by the state or by action "fairly attributable" to the state. Gilmore v. City of Montgomery, 417 U.S. 556, 574 (1974) (right of association); Amoco Oil Co. v. Local 99, Intern. Bro. of Elec. Workers, 536 F. Supp. 1203, 1215-16 (D.R.I. 1982)(right of association). See Lugar v. Edmondson Oil Co.,

50 U.S.L.W. 4850, 4854 (U.S. June 25, 1982) ("Our cases have...insisted that...conduct allegedly causing the deprivation of a federal right be fairly attributable to the state."). However, defendants' state action analysis is fundamentally flawed. Defendants ignore the fact that the challenged statute's effective abolition of existing ward committees, which is a predicate for any appointments made by the city committee chairmen, is indisputably state action. S2721 provides explicitly that the "ward committees of the several wards of...Providence in office on the effective date of this act shall not thereafter exercise any powers of nomination or endorsement...." (Emphasis added.) Furthermore, the statute mandates that the city committee chairmen themselves make appointments to the "new" committees - action that the chairmen would not otherwise be able to take. Because the statute's initial eradication of existing ward committees and its interference with internal party processes constitute state action that violates the plaintiffs' First

Amendment rights, see pp. 15-20 infra, the Court need not consider whether particular appointments made pursuant to S 2721 are also state action.

III. FIRST AMENDMENT RIGHT OF POLITICAL ASSOCIATION

"While it is true that the administration of the election process is a matter which has largely been entrusted to the states, the Supreme Court has made it clear that 'the states may not infringe upon basic constitutional protections.'" Anderson v. Mills, 664 F.2d 600, 609 (6th Cir. 1981) (quoting Kusper v. Pontikes, 414 U.S. 51, 57 (1973)). Among these basic constitutional protections is the First Amendment right of political association. "There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments [against state interference]." Kusper v. Pontikes, 414 U.S. 51, 56-57 (1973). However, "it is clear that 'neither the right

to associate nor the right to participate in political activities is absolute.'" Buckley v. Valeo, 424 U.S. 1, 25 (1976) (quoting Civil Service Comm'n v. National Ass'n of Letter Carriers, 413 U.S. 548, 567 (1973)). Where a state statute produces a "significant interference" with First Amendment associational rights, Marchioro v. Chaney, 442 U.S. 191, 199, 199 n.15 (1979); Buckley v. Valeo, supra, at 25; Fahey v. Darigan, 405 F. Supp. 1386, 1395 (D.R.I. 1975). the statute will be upheld if it serves a compelling state interest, Democratic Party v. LaFollette, 101 S.Ct. 1010, 1020 (1981); Buckley v. Valeo, supra, at 25; Cousins v. Wigoda, 419 U.S. 477, 489 (1975), and if the statutory scheme is the means of achieving the state's purpose that is least intrusive on the constitutional rights involved. Democratic Pary v. LaFollette, supra, at 1026-27 n.14 (dissenting opinion, Powell, Blackmun & Rehnquist, J.J.); Kusper v. Pontikes, supra, at 59.

In analyzing the present consolidated cases, the Court "must start with the basic premise that...a political party's management of its internal affairs is protected by its members' First Amendment freedom of association." Hunt v. Democratic Party of Oklahoma, 439 F.Supp. 788, 791 (D. Okla. 1919). Accord Ripon Society, Inc. v. National Republican Party, 525 F.2d 567, 585 (D.C.Cir.)(en banc), cert. denied, 424 U.S. 933 (1975); Fahey v. Darigan, supra, at 1394, 1397-98. The Supreme Court recently reaffirmed this principle in Democratic Party v. LaFollette, 101 S.Ct. 1010 (1981).

In LaFollette, the Court invalidated a Wisconsin statute that required the Wisconsin delegates to the Democratic National Convention to cast votes according to the results of the Wisconsin Democratic primary, in which non-Democrats could vote under state law. Wisconsin's statute violated the Party's internal rules as to selection of delegates, which restricted participation in the selection process to openly-declared Democrats and which

defined the selection process as including any procedure whereby delegates are bound to vote in a particular way. The Court noted that "the members of the National Party, speaking through their rules, chose to define their associational rights by limiting those who could participate in the processes leading to the selection of delegates to their national convention." Democratic Party v. LaFollette, 101 S.Ct. at 1019. The Court then held that a "political party's choice among the various ways of determining the makeup of a ...delegation to [a]...convention is protected by the Constitution." Id. at 1020. Because the Wisconsin statute served no compelling interest, and because "[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents," id.at 1019 (quoting Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957); NAACP v. Button, 371 U.S. 415, 431 (1963)), the Court held that "the interests advanced by the State do not justify its substantial intrusion into the associational freedom of

members of the National Party." Id. at 1020-21.[4/]

This Court has also found that certain state interference with purely internal party affairs can violate party members' associational rights. In Fahey v. Darigan, 405 F.Supp. 1386 (D.R.I. 1975), two Democratic voters residing in he ninth ward of the City of Providence challenged the constitutionality of a state statute increasing the number of ward committee members and empowering the chairmen of the city committees to appoint persons to fill the new committee positions. This Court found that both aspects of the statute violated the plaintiffs' First Amendment rights of political association. As to the increase in the number of committee members, this Court stated that "[w]e should not lightly dismiss, as de minimis, a party's choice of organizational structure...." Id. at 1397. "[T]he state intrusion at issue, which govern[ed] internal political party structure," was found to "impos[e] a substantial burden upon plaintiffs' associational rights and [was] therefore subject to strict judicial scrutiny."

Id. at 1398. Because the increase in the size of ward committees served no compelling state interest, this Court declared the statute unconstitutional.

The LaFollette and Fahey decisions clearly indicate that the plaintiffs in the three consolidated cases now before the Court, as members of the Providence Republican and Democratic parties, have a First Amendment associational interest in the freedom of their parties' internal processes from state interference. It is also clear that S2721 substantially interferes with the freedom of the Providence political parties to adjust to the disruption of ward boundaries and ward committees caused by the 1980 reapportionment. S2721 invalidates the old committees and vests exclusive power in the city committee chairmen to appoint new committees.

S2721 thus prevents the Providence Republican and Democratic parties from filling vacancies in the original ward committees

caused by reapportionment according to usual party practice for filling committee vacancies. Lloyd Griffin, a member of the Democratic tenth ward committee, and John Huntley, chairman of the Republican third ward committee, both testified at trial that vacancies on their committees have been filled customarily by a vote taken among the remaining members of the ward committees.[5/] It is reasonable to infer that vacancies on other ward committees are filled in the same way. In addition, s2721 prevents the parties from internally deciding how to select committee members for the newly-created fourteenth and fifteenth wards.

The chairman of the Republican city committee, however, makes two arguments, based on the city committee's by-laws, as to why S2721 does not significantly interfere with the associational rights of members of the Providence Republican party. First, the chairman points to Rule VII, §3(a) of the by-laws, which provides that "unless and until he is otherwise directed by the Committee or

the Executive Committee, [the chairman may] take such action concerning any matters as he or she deems best designed to further the interests of the Republican Party in Providence." Pls.'Ex. 24, at 8. The chairman suggests that this provision gives him the very powers of appointment that S2721 confers on him, and that the statute thus does not interfere significantly with internal party processes. This Court disagrees. Although this provision of the by-laws may give the chairman power to fill vacancies, the Court does not believe that the by-laws authorize the chairman to create vacancies by unilaterally removing incumbent committeemen from office. Moreover, there is no evidence in this case to indicate that the Republican chairman has exercised any such removal power under the by-laws, even if it does exit. Thus, it was S2721 alone that unseated incumbent Republican committeemen. In this way, S2721 significantly interfered with the First Amendment associational interest in the integrity of internal party processes.

Second, the Republican city committee chairman points to Rule III of the by-laws. This rule provides that the Republican city committee "shall have the power to manage the operations and activities of the Republican Party in Providence subject to chapter 17-12 of [the Rhode Island] General Laws." Pls.' Ex. 24, at 2. The chairman seems to argue that S2721, which amended a provision of chapter 17-12 of the General Laws, cannot possibly interfere with the associational rights of members of the Republican Party in Providence because the party's own by-laws incorporate chapter 17-12. Again, the Court cannot agree with the chairman's argument. The Court interprets Rule III of the by-laws as the Providence Republican Party's acquiescence in chapter 17-12 of the Rhode Island General Laws <u>as constituted when the by-laws were originally enacted</u>. The Court cannot believe that Rule III is a prospective, wholesale grant of authority to the state legislature to control completely the internal workings of the

Republican Party in Providence merely by making amendments to chapter 17-12. If one were to accept the chairman's literal reading of Rule III, the state would not violate the First Amendment right of political association by amending chapter 17-12 of the General Laws to provide that the Republican Party in Providence could no longer exist. Such an absurd possibility exposes the folly of the chairman's argument.

Because S2721 thus substantially interfers with the freedom of the Providence political parties, and because any interference with a party's freedom is also an interference with its members' freedom, Democratic Party v. La Follette, 101 S.Ct. at 1019; Cousins v. Wigoda, 419 U.S. at 487-88; Sweezy v. New Hampshire, 354 U.S. at 250, plaintiffs are entitled to relief.[6/] unless the statute serves a compelling state interest and does so in the manner least intrusive upon plaintiffs' First Amendment rights.[7/] Defendants argue that the state has a compelling interest in remedying the

fact that, after reapportionment, the incumbent ward committees in Providence are no longer truly representational of those persons now residing in the wards. Defendants point to the large shifts of population in and out of each ward that reapportionment caused. See pp. 4-5 supra. Thus, defendants contend that, even though most incumbent ward committee members still reside in the same wards, these committeemen likely no longer represent the persons who elected them into office, or who elected those committee members who appointed them to the ward committees.

Although a state may generally have a compelling interest in remedying problems of "malapportionment", see Fahey v. Darigan, 405 F.Supp. at 1396, the Court finds that, under the specific circumstances of these three cases, Rhode Island may well have had no compelling interest to pass S2721. Furthermore, even if the state's interest could be considered compelling, S2721 must fall because it simply does not serve the alleged

purpose for which it was enacted.

First, the problem of non-representativeness of the incumbent ward committees (at least on the Democratic side) may well not be as serious as defendants contend. Most incumbent Democratic ward committee members were not reapportioned out of the wards in which they were elected or appointed. See pp. 4-5 supra. Furthermore, the majority of persons living in most of the reapportioned wards were residents of the same wards prior to reapportionment. See id. Thus, it seems more likely that most of those persons who voted for incumbent ward committeemen are still living in the same wards than it is that these persons were reapportioned out of their old wards. Second, it is clear from the testimony at trial that both the Democratic and Republican parties in Providence are capable of adequately responding to the effect of reapportionment on the ward committees without state interference. Both parties have procedures for filling ward

committee vacancies. In fact, the Democratic city committee responded to the creation of wards fourteen and fifteen by empowering the city committee chairman to appoint committeemen for those wards.

Even if the state interest asserted by the defendants is compelling, S2721 is nonetheless unconstitutional because it is not even rationally related to the state's interest. The defendants suggest that appointment of new ward committees by the City committee chairmen would somehow result in committees that would be more representative of the current ward residents than would committees selected according to internal party processes. This argument is almost too tenuous to pursue. The Court utterly fails to perceive why vesting power in one individual in each party to make committee appointments is a fairer means of responding to the Providence reapportionment that are the parties' internal mechanisms. Rather, S2721 gives the City committee chairmen the opportunity to appoint

persons to the new ward committees solely for reasons of personal favoritism, rather than in an effort to produce committees that will more fully represent the interests of the population of the reapportioned wards. Thus, the challenged statute is by no means the least intrusive method of serving the state's interest; indeed, it does not appear to serve that interest at all. In sum, S2721 violates plaintiffs' First Amendment political association rights.

As noted earlier, however, in Gosz v. Quattrochi, No. 82-267 (R.I. July 15, 1982), the Rhode Island Supreme Court reached an opposite conclusion as to H7876, a statute that is virtually identical to S2721. Without intimating what its ultimate disposition will be after a full hearing in Bevilacqua v. Quattrochi, C.A. No. 82-0425, a case in this Court involving a constitutional challenge to H 7876 and raising First Amendment issues identical to those in Gosz, this Court wishes to indicate why it is not persuaded to follow

Gosz's reasoning and result in this opinion involving S2721.

First, the Rhode Island Supreme Court found that H7876 does not significantly burden the First Amendment associational rights of members of the Democratic Party because the statute is not inconsistent with any Party rule. This Court finds the Supreme Court's reasoning unconvincing. With all respect, the Court submits that whether or not the Democratic Party has a formal rule that explicitly conflicts with what H7876 mandates is irrelevant. H7876 nonetheless unseats duly-elected members of representative district committees who would have otherwise continued in office. Like S2721, this statute may result in committee endorsements different from those that the incumbent committees would make and, thus, may ultimately affect election results. Such state action can hardly be considered a constitutionally de minimis intrusion upon the internal workings of the political parties.

Next, the Supreme Court found that H7876 serves the state's compelling interest in insuring that, after reapportionment, the representative district committees "could function in an orderly fashion in preparation for the November 1982 election." Gosz v. Quattrochi, supra, at 9. The Supreme Court implies, without pointing to any evidence in the record, that the state political parties could not themselves respond to the problems caused by redistricting of the senatorial and representative districts in an orderly fashion. Even assuming this were true, however, this conclusion as to the existence of a compelling interest does not control the cases now before this Court. This Court has already found that the Providence political parties have the ability to deal with reapportionment of the wards in an orderly manner.

Finally, the Rhode Island Supreme Court also concluded that H7876 serves the State's compelling interest in insuring that the

representative district committees adequately represent the reapportioned districts, "the population and geography of [which are]...so significantly changed [from those of the prior districts]." Gosz v. Quattrochi, supra, at 9. Again, the Supreme Court's conclusion does not govern the three consolidated cases in this Court. This Court has found that population shifts in the various Providence wards were not so significant as to justify S2721's substantial intrusion into internal party processes.

IV. RELIEF

The Court has found that S2721 violates the plaintiff's First Amendment associational rights. S2721 is thus declared unconstitutional. In addition, all appointments made by the Republican city committee chairman to the Republican ward committees pursuant to S2721 and any endorsements made by newly-appointed members of those committees are declared null and void.

However, whether to grant injunctive

relief is a harder question. In deciding whether to issue permanent injunctive relief, the Court "must...consider the traditional factors which guide its discretion in the granting or withholding of equitable relief." MaCarthy v. Noel, 420 F.Supp. 199, 804 (D.R.I. 1976) (permanent injunctive relief as to state election law). Accord Marquez-Colon v. Reagan, Nos. 81-1041, 81-1334, slip. op. at 9 (1st Cir. Dec. 23, 1981) (permanent injunctive relief in environmental law case); Philadelphia Welfare Rights Org'n v. O'Bannon, 525 F. Supp. 1055, 1058 (E.D.Pa. 1981) (permanent injunctive relief in civil rights case); 11 C Wright & A. Miller, Federal Practice & Procedure §2942, at 365-67 (1973). Thus, the Court must weigh the following factors:

> the adequacy of another remedy; the benefit to the plaintiff[s] if injunctive relief is granted and hardship if such relief is denied; the hardship on the defendant if injunctive relief is granted; the hardship on third parties; the convenience and effectiveness of administration; and the public and social consequences of either granting or denying injunctive relief.

Philadelphia Welfare Rights Org'n. v. O'Bannon, supra, at 1058. Accord McCarthy v. Noel, supra, at 804-05.

A. Huntley v. DiSanto

The Huntley plaintiffs not only want S2721 declared unconstitutional, but seek an injunction prohibiting the newly-appointed Republican third ward committeemen from taking any further actions as members of the ward committee. In addition, they request an order enjoining the Board of Canvassers from recognizing any endorsement made by members of the newly-appointed Republican third ward committee and requiring the Board to recognize and process endorsements made by the incumbent Republican third ward committee.

One factor gives the Court pause when "balancing the equities" in the Huntley case: delay in bringing the suit. It was not until newly-appointed third ward committeemen had already filed endorsements with the Board that the Huntley plaintiffs sought out legal representation. At trial, Plaintiffs' counsel

could offer no explanation for this delay. However, the Court cannot say that the delay of a few days in Huntley was inherently unreasonable, and defendants have not contended that they were prejudiced by this delay in filing suit. Thus, the Court does not find that this delay bars injunctive relief in Huntley.

The Court finds that the requested injunctive relief should issue in Huntley. The primary elections for which ward and city committee endorsements are required are scheduled for September. Thus, injunctive relief will not disrupt an imminent election. Furthermore, permanent injunctive relief will cause only minimal inconvenience to the defendants and to the public. For example, the Board of Canvassers will merely be required to accept and process endorsements from the incumbent Republican third ward committee members. In addition, according to counsel for plaintiffs in Huntley, the Secretary of State has not yet begun to draw up ballots

for the September elections which, when prepared, will indicate those candidates having the endorsement of the party committees. R.I. Gen. Laws §§17-15-7, 17-15-8. Finally, this injunctive relief will not cause undue public confusion, and seems clearly in the public's best interest.

B. Griffin v. Bucci and Walker v. Bucci

The plaintiffs in Griffin and Walker seek an injunction prohibiting Democratic city committee chairman Bucci from making any appointments pursuant to S2721 and ordering the Board of Canvassers to recognize the endorsements filed by the incumbent Democratic ward committeemen. This injunctive relief should certainly issue. Because of the temporary restraining order entered by this Court, defendant Bucci has made no appointments pursuant to S2721. Rather, the incumbent ward committeemen have made and filed endorsements for ward committee, city council, and mayor. Thus, enjoining defendant Bucci from acting pursuant to S2721 and requiring the Board to

accept and process endorsements made by the incumbent ward committeemen will apparently cause no inconvenience and will certainly be in the public interest. Neither appointments nor endorsements need be nullified.

The Court finds that S2721 violates plaintiffs' First Amendment associational rights. Judgment will accordingly be entered for plaintiffs. The parties are directed to prepare an order within forty-eight hours spelling out the details of injunctive and declaratory relief consistent with this opinion.

SO ORDERED.

By Order,

/s/
Clerk

Enter:

/s/Raymond J. Pettine
Senior Judge

July 26, 1982

FOOTNOTES

1/ S 2721 provides in relevant part:

> The ward committees of the several wards of the city of Providence in office on the effecitve date of this act shall not thereafter exercise any powers of nomination or endorsement of candidates for city council or mayor, except for a special election for councilman prior to the first Tuesday after the first Monday in November, 1982 but the chairman of the city committee of each political party forthwith upon the passage of this act shall appoint the members of a ward committee for each of the several wards of the city of Providence. Such ward committee members, so appointed shall hold office until the primary election in 1982 and thereafter until their successors shall have been duly elected, qualified and organized.

2/ Because of the particular disposition in these three cases, the Court need not reach the other federal and pendent state law claims that plaintiffs raise in their complaints. In addition, for the reasons contained in a separate opinion and order, the Court chooses not to certify Griffin v. Bucci as a class action.

3/ The plaintiffs' failure to join at least one state official as a party defendant does not require dismissal of these three cases under Fed. R.Civ. P. 19. See Dieffenbach v. Buckley, 464 F. Supp. 670, 676 n.6 (D.N.H. 1979) (dropping state attorney general as unnecessary in constitutional challenge to statute); S.E.C. v. First Tennessee Bank N.A. Memphis,

445 F. Supp. 1341, 1343-44 (W.D.Tenn. 1978) (failure to join state attorney general in constitutional challenge to statute); Liquifin Aktiengesellschaft v. Brennan, 383 F. Supp. 978, 984 (S.D.N.Y. 1974) (same). First, the Court can determine the merits of plaintiffs' constitutional arguments without the state's participation, and can grant adequate declaratory and injunctive relief in its absence. Second, there is no reasonable likelihood of multiple suits or inconsistent obligations if the state or a state official is not joined under Rule 19(a). Third, in a letter to this Court the Rhode Island Attorney General, the state's legal counsel, expressly declined the opportunity to intervene in these consolidated suits. The Attorney General's letter indicates either that: (1) the state does not "clai[m] an interest relating to the subject of the action[s]," Fed. R.Civ. P. 19(a)(2); or (2) the state believes that the current parties will adequately represent its interest in upholding S2721, and thus that "disposition of the action[s] in [its] absence" will not "impair or impede [its] ability to protect [its] interest." Id. 19(a)(2)(i).

4/ Cousins v. Wigoda, 419 U.S. 477 (1975), is another case in which "the Court... placed the internal workings of a political party squarely within the protection of the First Amendment...." Ripon Society, Inc. v. National Republican Party, 525 F.2d 567, 586 (D.C.Dir.)(en banc), cert. denied, 424 U.S. 933 (1975). In Cousins, the Court quashed as unconstitutional an Illinois state court injunction restraining the National Democratic Party from refusing to seat delegates at its

national convention who were selected according to state rules which were contrary to the Party's own selection rules.

5/ To be precise, Griffin testified that vacancies on the Democratic tenth ward committee have been filled pursuant to Democratic city committee by-laws drawn up in 1976 by the previous city committee. See Pls.' Ex. 18. These by-laws, which expressly apply to subsequent city committees, provide that ward committee vacancies are to be filled by a majority vote of the remaining committee members. Id. at 2. Thus, it is reasonable to infer that Griffin meant that committee vacancies are filled by a vote of the remaining members when he stated that vacancies are filled pursuant to the by-laws.

However, Ms. Moise, also a member of the incumbent Democratic tenth ward committee, testified that she has never heard of these by-laws, and that her ward committee has never acted pursuant to them. In addition, Mr. Bucci, the chairman of the Democratic city committee, argues that these by-laws are invalid under state law because state law prohibits the by-laws of one political committee from binding a subsequent committee. Neither Moise nor Bucci, however, dispute that Democratic ward committee vacancies are customarily filled by a majority vote of the remaining committee members.

Whether the Providence Democratic and Republican ward committees fill vacancies according to formal by-laws that are valid under state law, or according to unwritten party custom, or, indeed, according to ad hoc decisions of the ward

committees, is irrelevant. It is not disputed that S2721 imposes on the political parties a procedure for dealing with the effect of reapportionment on the ward committees that the parties would not otherwise have used. Thus, whatever procedures might otherwise apply, the procedure mandated by S2721 significantly interferes with the internal processes of both parties.

6/ Because S2721 interferes with the freedom of the political parties in each ward in Providence, the Griffin and Walker plaintiffs, who are suing for city-wide injunctive relief, may challenge the statute's effect on all Democratic ward committees in the city. The associational interest of these plaintiffs in the integrity and freedom of party processes cannot rationally be restricted to the geographical boundaries of the wards in which they live. In short, internal processes of the Providence political parties operate on a city-wide basis.

Furthermore, there is a significant likelihood that plaintiffs will suffer injury in fact if city-wide injunctive relief is not granted, thus conferring standing on them to challenge the city-wide effect of S2721 on all Democratic city committee chairman could appoint substantially new ward committees, thus destroying allegiances that have formed among the ward committeemen who make up the city committee. Such allegiances between the committeemen who represent the plaintiffs and other ward committee members can only benefit the plaintiffs, and destruction of such allegiances can only cause plaintiffs injury.

The Democratic city committee chairman, however, argues that plaintiffs will not suffer injury in fact if injunctive relief is limited to the ward in which they reside. Essentially he contends that plaintiffs' claim for city-wide relief is moot. The chairman has filed an affidavit in which he states that "in the event the...statute... is upheld, the affiant has no intention of calling the Providence Democratic City Committee together for an additional meeting to reconsider its endorsement for Mayor." Affidavit of Anthony J. Bucci at 1 (July 6, 1982). The chairman thus contends that appointment of committeemen to Democratic ward committees other than in wards ten and eleven would not injure the plaintiffs because the city committee's mayoral endorsement would remain the same. The allegiances that operated to produce that endorsement would not be disturbed.

The Court cannot accept this argument. Notwithstanding the chairman's promise, he has not shown that he would have the power to prevent a "new" city committee, which would include his appointees, from deciding itself to reconvene to reconsider the mayoral endorsement. Because the city committee might itself choose to reconsider the endorsement, plaintiffs still stand to suffer injury in fact if city-wide injunctive relief is not granted.

Finally, the Court notes again that the complaint in the Huntley case seeks injunctive relief only as to the Republican third ward committee.

7/ In addition to violating the associational interest in the integrity of internal party processes, S2721 may also violate the First Amendment by interfering with the votes cast by certain plaintiffs for incumbent ward committeemen in the 1978 party primaries. The First Amendment protects the right to participate in group political activity. Voting in party primaries is one means by which parties allow their "rank and file" to participate within the parties. The Supreme Court has acknowledged that state interference with an individual's associational interest in voting in a political primary may violate the First Amendment. In Kusper v. Pontickes, 414 U.S. 51 (1973), the Court declared unconstitutional an Illinois statute that prohibited persons from voting in one party's primary election if they had voted in another party's primary within the past twenty-three months. The Court held:

> By preventing the appellee from participating at all in Democratic primary elections during the statutory period, the Illinois statute deprived her of any voice in choosing the party's candidates, and thus substantially abridged her ability to associate effectively with the party of her choice.
>
> Id. at 58.

Thus, S2721 may well violate the First Amendment rights of persons who voted for ward committeemen in the 1978 elections because the statute eradicates the old committees, thus invalidating any votes cate for now incumbent committee members. See Fahey v. Darigan, 405 F. Supp. 1386, 1396 (D.R.I. 1975) (statute increasing size of ward committees and requiring city

committee chairmen to appoint new ward committeemen "essentially revis[es]... outcome of...primary election [and]... works a substantial burden on the party members' right to associate.").

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

LLOYD T. GRIFFIN, JR., et al.	)	
	)	
v.	)	C.A. NO.
	)	
ANTHONY J. BUCCI, et al.	)	82-0358P

J U D G M E N T

This matter came on for trial before Pettine, S.J., upon plaintiffs' complaint for declaratory and other relief with respect to P.L. 82 ch. 405 entitled "An Act Relating To Elections" amending Section 17-12-9 of the General Laws of Rhode Island, 1956, as amended, which statute was enacted by the Rhode Island General Assembly on May 18, 1982. In accordance with the findings of fact and conclusions of law contained in the Opinion and Order of the Court issued July 26, 1982, it is hereby ORDERED AND ADJUDGED as follows:

1. Subject matter jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343(a)(3),

2201, and 2202.

2. P.L. 82 ch. 405, amending Section 17-12-9 of the General Laws of Rhode Island, 1956, (1981 Reenactment), is hereby declared to be in violation of the First Amendment to the tonstitution of the United States and 42 U.S.C. §1983.

3. Defendant Anthony J. Bucci, Chairman of the Democratic City Committee, his agents, successors, employees and assigns are hereby enjoined from appointing any person or persons to the Democratic Ward Committees of the City of Providence pursuant to G.L. 1956, (1981 reenactment) §17-12-9 as amended by P.L. 82 ch. 405.

4. Defendants Leo Baronian, Francis Dean and Roland Dumont, as members of the Board of Canvassers of the City of Providence, their agents, successors, employees and all per-

sons acting in concert therewith are hereby enjoined from recognizing any Democratic Ward Committee or any member thereof appointed pursuant to G.L. 1956 (1981 reenactment)--§§17-12-9, as amended by P.L. 82--405; and from accepting or otherwise recognizing the endorsements of any Democratic Ward Committee or member so appointed; and they are further enjoined from rejecting or otherwise failing to recognize or officially act upon any endorsements of Democratic Ward Committees duly constituted according to state law, city ordinance, or regulation, practice, or procedure in effect prior to the adoption of P.L. 82, ch. 405 or adopted subsequent thereto and not in conflict with this judgment.

5. Plaintiffs may submit a motion for attorney's fees and costs within thirty (30) days from the entry of

this judgment or, in the event of an appeal, within thirty (30) days from the entry of the mandate of the Court of Appeals.

Entered as the Judgment of this Court this 27th day of July, 1982.

By order,

/s/Sidra Coppola
Deputy Clerk

Enter:

/s/Raymond J. Pettine
Pettine, S.J.
July 27, 1982

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

LLOYD T. GRIFFIN, JR., et al.)

v.) Civil Action
No. 82-0358 P

ANTHONY J. BUCCI, et al.)

ORDER

In keeping with the mandate of the United States Court of Appeals for the First Circuit entered October 29, 1982, this action is dismissed as moot.

By Order,

/s/Sidra Coppola
Deputy Clerk

Enter:

/s/Raymond J. Pettine
Senior Judge

December 16, 1982

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 1982

AN ACT

RELATING TO ELECTIONS

Introduced By: Senators Quattrocchi, Bevilacqua, Castro

Date Introduced: March 11, 1982

Referred To: Senate Committee on Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Section 17-12-9 of the General Laws in Chapter 17-12 entitled "Party Committees and Conventions" is hereby amended to read as follows:

17-12-9. Organization of city, town and district committees --Officers--Lists of officers and members -- All city, town and district committees shall organize biennially in the month of January in every odd year, provided however, that the city committee of the city of Providence shall organize quadrenni-

ally.

Each city committee organized under this section may elect not exceeding three (3) officers outside its membership from among the voters of the same political party in said city, and such officers shall, by virtue of their election, become members of the city committee and shall hold office until the next organization meeting of said committee.

Each city committee, each town committee and each district committee, within ten (10) days, after its organization, shall file with the secretary of state and with the local board, a list of its officers and members.

The ward committees of the several wards of the city of Providence in office on the effective date of this act shall not thereafter exercise any powers of nomination or endorsement of candidates for city council, or mayor except for a special election for councilman prior to the first Tuesday after the first Monday in November, 1982 but the chairman of the city committee of each polit-

ical party forthwith upon the passage of this act shall appoint the members of a ward committee for each of the several wards of the city of Providence. Such ward committee members, so appointed shall hold office until the primary election in 1982 and thereafter until their successors shall have been duly elected, qualified and organized.

SECTION 2. This act shall take effect upon passage.

BY THE LEGISLATIVE COUNCIL

OF

AN ACT

RELATING TO ELECTIONS

***

This act would provide that in the City of Providence, the chairman shall appoint new ward committees prior to the 1982 election.

This act would take effect upon passage.

(S2721)

S.B. 2721

AN ACT

RELATING TO ELECTIONS

IN THE SENATE MAR 11 1982

Read and referred to the Committee on JUDICIARY

Secretary

IN SENATE

THE COMMITTEE ON JUDICIARY

RECOMMEND THE PASSAGE S.B. 2721 OF THE WITHIN BILL

FOR THE COMMITTEE

IN THE SENATE MAR 24 1982

Ordered to be placed on the Calendar

Secretary

IN THE SENATE MAR 26 1982

Read and PASSED

Secretary

IN HOUSE OF REPRESENTATIVES

MAR 26 1982

IN HOUSE OF REPRESENTATIVES

MAY 11 1982

THE COMMITTEE ON JUDICIARY

RECOMMEND THE PASSAGE IN CONCURRENCE

OF SAID WITHIN BILL S.B. 2721

Chairman

OFFICE OF PRESIDENT/SPEAKER

MAY 19 1982

Clerk

MAY

READ AND PASSED

Clerk

Presented by

IN THE SENATE MAY 19 1982

Read and PASSED

BY CONCURRENCE

AS AMENDED

Secretary

NEED NOT BE PRINTED IN ENGROSSMENT

RETURNED TO HOUSE

MAY 19 1982

RECEIVED FROM THE GOVERNOR

WITHOUT SIGNATURE

MAY 26 1982

Secretary

EXECUTIVE DEPARTMENT

Received MAY 26 1982

GOVERNOR

S.B. 5

CHAPTER 35

AN ACT Providing for the Quadrennial Election of Ward Committees in the City of Providence, Abolishing the Present Ward Committees in the City of Providence and Providing for the Interim Appointment Thereof.

It is enacted by the General Assembly as follows:

Section 1. Sections 17-12-6 and 17-12-9 of the general laws in chapter 17-12 entitled "Party committees and conventions" as amended, are hereby amended to read as follows:

"17-12-6. ELECTION OF TOWN AND WARD COMMITTEES.--The party voters of each political party in each ward of each of the cities of the state shall, biennially, in every even year, at the primary election held to nominate party candidates, elect a ward committee for each such ward, provided, however, that the ward committees in the city of Providence shall be elected quadrennially, and the party voters of each political party in each of the towns of the state shall biennially at said primary election elect a town committee for such town."

"17-12-9. ORGANIZATION OF CITY, TOWN AND DISTRICT COMMITTEES--OFFICERS--LISTS OF OFFICERS AND MEMBERS.--All city, town and district committees shall organize biennially in the month of January in every odd year, provided however, that the city committee of the city of Providence shall organize quadrennially.

Each city committee organized under this section may elect not exceeding three (3) officers outside its membership from among the voters of the same political party in said city, and such officers shall, by virtue of their election, become members of the city committee and shall hold office until the next organization meeting of said committee.

Each city committee, each town committee and each district committee, within ten (10) days, after its organization, shall file with the secretary of state and with the local board, a list of its officers and members."

Sec. 2 The ward committees of the several wards of the city of Providence in office on the effective date of this act shall not thereafter exercise any powers of nomination or endorsement of candidates for city council, except for an election for councilman prior to the first Tuesday after the first Monday in November, 1970, but the chairman of the city committee of each political party forthwith upon the passage of this act shall appoint the members of a ward committee for each of the several wards of the city of Providence. Such ward committee members, so appointed shall hold office until the primary election in 1970 and thereafter until their successors shall have been duly elected, qualified and organized.

Sec. 3. This act shall take effect upon its passage.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. SUPERIOR COURT

ANGELO AIELLO, ET ALS	)	
	)	
vs.	)	CIVIL ACTION
	)	NO. 70-1814
AUGUST P. LaFRANCE, SECRETARY OF STATE, ET ALS	)	
	)	

DECISION OF HIS HONOR,
MR. JUSTICE WEISBERGER

JUNE 30, 1970

JUNE 30, 1970, MORNING SESSION

DECISION OF THE COURT

WEISBERGER, J. Well, gentlemen, the case presently before the Court involves the membership of the Fourth Ward Democratic Committee. The facts of the case are relatively brief and easy to state. Apparently, pursuant to the opinion of the Supreme Court of the United States in the Avery case, 390 U.S. 474, it was determined that the wards of the City of Providence were malapportioned and did not comply with the general one man, one vote principle, as a result of which, by act of the legislature, the City of Providence was authorized to reapportion its thirteen wards. This took place by virtue of an ordinance which in evidence in this case, and which is in no way being challenged.

Thereafter, the ordinance was again approved by the General Assembly and ratified and confirmed. That act is not challenged. However, as a result of the realignment of the ward lines and the movement of certain portions

of the population from one ward to another, the General Assembly was faced with a question as to the membership of the ward committees during the interim period between the passage of the act, which is apprently Chapter 35 of the Public Laws of 1970, regarding what should happen between the period of reapportionment of ward lines and the first primary, which would take place in September of 1970.

In order to provide for membership of ward committees in that interim period, the General Assembly saw fit to adopt Chapter 35, which provided for the discontinuance or end of power in the ward committees which had been elected in the last primary in September of 1968, and substituted therefor ward committees who would be appointed by the city chairman of the City of Providence. The city chairman saw fit in the case of the Fourth Ward, apparently, to appoint different persons than those who had been in office prior thereto, which of course, prompted the instant litigation. It is apparent that the Fourth Ward was

changed to some extent in area, with one portion being added and another portion being deleted therefrom, so that the boundaries and population are somewhat different than they were prior to the ordinance which redistricted the city.

Now the question arises, since the city chairman acted pursuant to the statute, Chapter 35 of the Public Laws of 1970, is this statute unconsitutional, and is the grant of power to the city chairman to appoint, an unconstitutional delegation of legislative power of the state; and indeed, does it constitute a violation of the rights of the former members of the ward committee under the Constitution of the State of Rhode Island and under the Constitution of the United States? We must begin with certain principles which have been enunciated by the Supreme Court of Rhode Island, not once, but on a great many occasions, in cases relating to elections and in cases relating to other controversies. First of all, it has been stated by the Supreme Court on numerous

occasions that an act of legislature is presumed to be constitutional until proven unconstitutional beyond a reasonable doubt. This is the language of the Supreme Court. Every act of the legislature is entitled to every presumption and intendment in its favor. Certainly, an act of the legislature in the field of elections must be scrutinized with the greatest of care by any court which is asked to determine it unconstitutional, because in both advisory opinions and litigated cases our Supreme Court has said that the General Assembly of the State of Rhode Island has plenary power to determine matters relating to elections, matters relating to voting, matters relating to the machinery incident thereto, be it party machinery, endoresement machinery, nominating machinery. In all of these areas, the General Assembly has maintained from the very beginning of our constitutional history, full and complete powers. This is not to say, of course, that the General Assembly has the power to violate

rights of individuals either under the federal or state constitution, but excepting where those rights are clearly violated by an act of the legislature, in areas determining the wisdom of policy, in any area other than that which is absolutely ordained by the constitution, the determination of the General Assembly is final and binding, and may not be disturbed by the Court.

In respect to the Constitution of the United States and the one man, one vote principle, our Supreme Court in the case which has been cited by both sides, Gallant v. LaFrance, 222 A.2d 567, our Court discussed to some extent the constitutional aspects, the federal constitutional aspects relating to the endorsement machinery and congressional district committee. I think that the excerpt of this decision on this point is of significance, and a quotation thereof my be useful. The Court stated on Page 570 of 222 A2d, "Whenever there is an exercise of state sovereignty by a purported majority, equal protection of the law requires that said majority

equal protection of the law requires that said majority be in fact a representative majority of the electorate affected. While it may be argued that committee endorsement of a primary candidate made pursuant to §17-12-4, as amended supra, confers a theoretical advantage on a candidate so endorsed, it cannot be argued that such endorsement deprives any voter, otherwise qualified to vote in the party primary, from participating equally with all other voters in choosing the party's nominees. In short, it is the action of the majority as expressed by their votes at the polls which makes the determination that is governed by the principle of one man, one vote.

Now, by that enunciation of principle, in the opinion of the Court, the Supreme Court of Rhode Island clearly indicated that the party machinery, district committees, and I think inferentially ward committees, may be set up on some principle other than one man, one vote, without depriving the party

who participates in the primary election of the equal protection of the law required by the constitution of the United States; because in fact, even though in the Gallant case it may well have been that the former district committee was malapportioned, this did not prevent those who would participate in the primary from having the full effect of the one man, one vote principle. Therefore, I would infer from this determination that the General Assembly has some latitude within the ambit and parameters of the one man, one vote principle, in the setting up of party machinery, so long as the structure is not setting up of party machinery, so long as the structure is not inherently unreasonable.

As a consequence, in the opinion of this Court, the General Assembly, upon the redistricting of the wards of the City of Providence, or the reapportionment of these wards, had various alternatives open to it. It might well have allowed the old ward

committees to function. It might well have done so, as was apparently approved in the Gallant case. However, the General Assembly also had to take into account from point of view of reasonableness, the fact that these wards were no longer comprised of the same individual voters as the old wards had been. Therefore, in determining whether to allow the old ward committees to function in the interim period, the General Assembly had the right to take into consideration these changes.

This Court has been given evidence of the changes in the Fourth Ward. It has not been given evidence of the changes in other wards, in terms of specific area. However, from the ordinance which is in evidence, it is obvious that fairly substantial changes were made. Areas were added and deleted from the various ward structures. Now, of course, I suppose the General Assembly might have ordered an election in the City of Providence to create new ward committees in anticipation of the primary. However,

the General Assembly did not choose this route, but ordered that the city chairman appoint new ward committees. The city chairman is apparently elected by the various members of the ward committees of the City of Providence, and therefore, indirectly or in a derivative sense, he may be said to represent the members of that political party at large throughout the city; and in conferring the power to appoint upon the chief official of the Democratic party in the City of Providence, the General Assembly doubtless was proceeding on the assumption that the delegation of power to the chief official of the Democratic party in the City of Providence would be an appropriate delegation, since he could be said indirectly to represent all of the members of the Democratic party in that city and that he might be safely entrusted with the task of appointing the various members of the new interim ward committees.

I realize that Mr. Ricci and the plaintiffs in this case may have every reason to question the wisdom of the legislature in

making this delegation, perhaps even more reason to question the wisdom of the city chairman in appointing persons other than themselves to the office of ward committeemen for the Fourth Ward of the City of Providence. However, this Court is not empowered to determine de novo the wisdom of the acts of the General Assembly or the wisdom of those to whom the General Assembly may have delegated power. This Court is limited solely to a determination of the constitutionality of the legislative act and whether or not the person who has been delegated with this power has acted in accordance therewith. There seems, from the facts of the case, no doubt that Mr. McGarry, the Democratic chairman, has acted pursuant to the powers conferred upon him by Chapter 35. Further, in the opinion of the Court, the determination of the legislature in this instance, being faced with an interim problem, being faced with the situation in which the wards were not identical with those wards which had previously elected ward com-

mitteemen, being faced with the question as to the expense and difficulty of a city-wide election, to act within a relatively brief interim period, I cannot say that the act of the legislature in conferring the power of appointment on the city chairman in this instance was unreasonable, arbitrary or capricious. It was one of the alternatives open to the legislature. This is the alternative which the legislature adopted. I do not find it unreasonable, arbitrary or capricious. It may be that those of us here present might think of other methods that were equally good. It may be that we could conceive of methods that are even better. However, this is the method which the legislature adopted. I believe that it was within its power so to choose, and that this Court does not have the right to set that method aside.

As mentioned in the Gallant case, the people of the City of Providence will have every opportunity and every opportunity and

every right, those of the Democratic party persuasion, to participate in the primary and have the maximum effect given to their vote in accordance with the one man, one vote principle. The method of endorsement is the sole matter which is affected by this act indirectly. I feel that there is nothing within the equal protection clause of the Constitution of the United States that would prohibit this act of the legislature.

In respect to the disqualification of the plaintiffs to hold office and the citation of the Constitution of Rhode Island, in the opinion of the Court that disqualification relates to matters of religion or other disqualification. Actually, these plaintiffs are in no way declared to be disqualified to hold office. It is simply a legislative determination that their office must come to an end by virtue of the reapportionment of the ward since the wards to which they were elected no longer exist. This is not a personal disqualification in any way, and

all of these parties were eligible for appointment by the city chairman. The fact remains that the city chairman did not choose to appoint them, but this in no way involves a personal disqualification to hold office.

As a consequence and for the reasons stated, this Court is of the opinion that the act of the legislature is valid and that the act of the city chairman made pursuant thereto is valid and not in violation of any law. As a consequence, the complaint of plaintiff against the various parties defendant, including the Secretary of State and others, is hereby dismissed. Judgment may be entered for the defendants. By the way, gentlemen, I have chosen to treat this matter as though it was heard on its merits. I realize it was set down for hearing on preliminary injunction, but in the event that you desire to take any appeal, it would seem appropriate for the Court to make a final determination at this time. It was here officially for hearing on preliminary injunction, since an ex party restraining

order was not granted. Because of the fact that counsel agreed as to all the facts, it did not seem to the Court that it was necessary or appropriate to continue the matter to a further date beyond the critical date in which you are interested. Is there any challenge to the Court's deciding the case on the merits?

MR. LEPORE: No, Your Honor.

THE COURT: All right. Then you are perfectly free now to take further proceedings. This is a final decision on the merits of the case.

****

July 15, 1982

Supreme Court

Angelica B. Gosz et al.	)	
	)	
v.	)	No. 82-267-
	)	
Rocco A. Quattrocchi et al.	)	Appeal

Supreme Court

No. 82-267-Appeal

Angelica B. Gosz et al.

v.

Rocco A. Quattrocchi et al.

O P I N I O N

WEISBERGER, J. This case comes before us on appeal from a judgment entered in the Superior Court declaring section 9 of P.L. 1982, ch. 20, to be unconstitutional, declaring appointments made by defendant Rocco Quattrocchi to the Thirteenth Representative District Committee of the Democratic Party void and of no legal effect, and enjoining the Secretary of State from receiving those appointments as lawfully made. The judgment further declared that the plaintiffs would continue to exercise their funtions as members of the Thirteenth Representative District Committee until their successors were elected and qualified.

A justice of this court issued a modified stay of the Superior Court judgment on June 14, 1982. This modified stay authorized the Secretary of State to receive tentative endorsements from both the old and the new Thirteenth Representative District Committees but to hold such endorsements in abeyance pending further determination of this Court.

Thereafter, a hearing on defendants' motion for a stay was held on June 16, 1982. At the time of that hearing the court granted a motion to intervene by Frank J. Fiorenzano, the member of the House of Representatives who currenly holds office in the Thirteenth Representative District, and the present members of the new committee. A further stay of the trial court's order was granted, and the appeal was scheduled for hearing on the merits on Monday, June 21, 1982. Following said hearing this court entered an order reversing the judgment of the Superior Court and remanding the case to that court with

instructions to enter judgment for defendants. This opinion sets forth the reasons for said order. The facts underlying this controversy are based upon an agreed statement filed by the parties in the Superior Court. Said statement reads as follows.

> "1. The plaintiffs in the instant action were duly elected to the 13th Representative District Committee pursuant to Rhode Island General Laws 1956 (1969 Reenactment) Section 17-12-7 on September 9, 1980; their election at said primary was uncontested by opponents.
>
> "2. Pursuant to Rhode Island General Laws Section 17-12-7 as then in force, plaintiffs were elected for a term of two years beginning in January, 1981, and until their successors shall have been duly elected, qualified, and organized.
>
> "3. Pursuant to said statute and election, plaintiffs' function as members of the District Committee is to endorse a candidate for the district, to endorse themselves as members of said committee, and to fill vacancies on said committee.
>
> "4. On April 20, 1982, the General Assembly passed House Bill 7876, Substitute A as amended, and now contained PL 1982, c20, which among other things empowered the chairman of the Democratic party, namely;

defendant Rocco A. Quattrocchi to appoint forthwith representative democratic committee members in each of 100 Districts throughout the State of Rhode Island (including the 13th Representative District Committee).

"5. Pursuant to said newly enacted statute, defendant, Rocco A. Quattrocchi, as Chairman, appointed a totally new 13th Representative District Committee (none of whom were plaintiffs) and has made appointments in districts throughout the State of Rhode Island.

"6. Plaintiffs were elected to a district which is outlined in green and yellow on the sheets attached hereto and marked as Exhibit A. The population in said district was 8,579; the new members appointed by defendant Quattrocchi to the 13th Representative District Committee were appointed to the reapportioned district outlined in red and yellow on the attached Exhibit A. The population in said reapportioned district, which was created by PL 1982, c20, is 9,624.

"7. The defendant, Robert M. Burns, in his capacity [sic] received and accepted the new appointments made by defendant, Chairman."

THE EQUAL PROTECTION ISSUE

The first issue asserted by defendants on appeal is that the trial justice erred in finding the challenged statute to be violative

of the Fourteenth Amendment to the Constitution of the United States in that it "unconstitutionally cancels the choices made by party voters in the 1980 primary election***." This finding of unconstitutionality was apparently based upon the belief that a modification of the endorsement power of a representative district committee constitutes state action and may be justified only in the event that a compelling state interest can be established. The difficulty with this holding is that it is based upon a misconception of the endorsement process. We have held in Gallant v. LaFrance, 101 R.I. 299, 306, 222 A.2d 567, 570 (1966):

> "While it may be argued that committee endorsement of a primary candidate made pursuant to §17-12-4, as amended supra, confers a theoretical advantage on a candidate so endorsed, it cannot be argued that such endorsement deprives any voter, otherwise qualified to vote in the party primary, from participating equally with all other voters in choosing the party's nominees. In short, it is the action of the majority as expressed by their votes at the polls which makes the

> determination that is governed by the principle of 'one man, one vote.'"

Thus, the equal protection clause of the Fourteenth Amendment, which protects the fundamental right to vote, is not implicated by a statute that purports only to modify the power of endorsement.

In a searching analysis of a similar set of issues, Chief Judge Pettine in Fahey v. Darigan, 405 F.Supp. 1386 (D.R.I. 1975), determined that a Rhode Island statute which affected the makeup of Providence ward and city committees of the Democratic and Republican Parties did not violate the equal-protection clause and its "one person one vote" requirement since the endorsement process is essentially private, as opposed to public, action. In so holding, the Federal District Court adopted the rationale set forth by our court in Gallant v. LaFrance, supra, and also a similar analysis adopted by the United States Court of Appeals in Lynch v. Torquato, 343 F.2d 370 (3d Cir. 1965).

In the absence of a constitutional limitation, it is of course within the legislative prerogative to modify or shorten a term of office created by a previous statute. Gorham v. Robinson, 57 R.I. 1, 19, 186 A. 832, 842 (1936). This principle is derived from the general proposition that a legislature has the right to alter or to amend any act previously adopted. Advisory Opinion to the Senate, 108 R.I. 302, 304, 275 A.2c 256, 257 (1971).

Since the equal-protection clause and its related "one person one vote" principle are not implicated by a modification of the endorsement procedure, the Fourteenth Amendment to the Constitution of the United States would not inhibit the action taken by the Legislature in adopting P.L. 1982, ch. 20, §9. Further, we find no inherent inconsistency in the provision that the former district committee members shall continue to hold office in respect to endorsement of candidates "for an election for senator or

representative prior to the first [T]uesday after the first [M]onday in November, 1982." This provision was designed to retain the endorsement power in the former committee members in respect to any election that might take place prior to the November 1982 election. Thus, the General Assembly was attempting to avoid a vacuum in the endorsement process in respect to special elections that might precede the 1982 general election. This provision, in our opinion, does not derogate from the clarity of the appointment power for new committee members conferred upon the chairman of the State Democratic Party. It should also be noted that the persons selected by the state chairman to serve as members of the representative district committees will be subject to the party electoral process beginning with the primary election in 1982 in harmony with the provisions of G.L. 1956 (1981 Reenactment) §17-12-8.

In Fahey v. Darigan, supra, the court held that a legislative enactment that increased the size of ward committees in the city of Providence constituted a substantial burden upon the party members' associational rights because it was inconsistent with the rule established by the party in question. 405 F. Supp. at 1396-98. Therefore, the court applied strict judicial scrutiny and, in the absence of any proffer of a compelling state interest, found the statute to be invalid. Id.

The District Court in so holding relied heavily upon Cousins v. Wigoda, 419 U.S. 477, 95 S. Ct. 541, 42 L. Ed. 2d 595 (1975). In that case the United States Supreme Court held that the Illinois appellate court had violated the First Amendment associational right of delegates to the National Democratic Party Convention by enjoining a slate of Illinois delegates from taking their seats at such convention even though the cre-

dentials committee of the convention had accepted them as delegates. The Wigoda rationale rested upon the privileged necessity of a national political party convention to operate independently of state interference, although the state court was attempting to seat delegates who had been elected in a party primary in Illinois. The majority of the Court determined that the Illinois interest in protecting the integrity of its electoral process could not be deemed compelling in the context of the selection of delegates to the national party convention and that "'the convention itself [was] the proper forum for determining intra-party disputes as to which delegates [should] be seated.'" 419 U.S. at 491, 95 S.Ct. at 549, 42 L. Ed. 2d at 605 (quoting O'Brien v. Brown, 409 U.S. 1, 4, 92 S.Ct. 2718, 2720, 34 L. Ed. 2d 1, 6 (1972). Guided by the principles enunciated in Wigoda, supra, the Federal District Court in Fahey held that enlarging the membership of the Providence City Com-

mittee was not supported by a compelling state interest sufficient to overcome the First Amendment rights of the plaintiffs. 405 F.Supp. at 1396-98. In so holding, the court distinguished the case presented to it from one involving a state interest "such as the need to remedy an existing malapportionment***." Id. at 1396 (citing Aiello v. LaFrance, C.A. No. 70-1814 (R.I. Super. Ct., June 30, 1970)).

In the case at bar, the statute is not inconsistent with any rule of the Democratic Party. The size of the district committees has not been modified. In this instance the Legislature has authorized the state chairman of the Democratic Party to appoint district committee members in order to carry out the endorsement processes for the general election to be held in 1982. Assuming arguendo that strict judicial scrutiny should be applied to this legislative modification of existing district committees, we must determine whether this legislative intrusion is justified by a compelling state

interest. We are of the opinion that it is.

An examination of the act in question discloses that it was designed to implement the reapportionment of the General Assembly. In its application to the current controversy, it carried out a detailed reapportionment of 100 representative districts. Although the agreed statement of facts indicates that the reapportionment in respect to District No. 13 increased population by slightly more than 1,000 persons, it was asserted without contradiction at oral argument that many of the reapportioned districts were changed far more radically in terms of population and area than was the Thirteenth Representative District. It can scarcely be denied that the reapportionment of the House of Representatives pursuant to the mandate of the United States Constitution would rise to the level of a compelling state interest. The obligation to reapportion following a federal census in order to maintain the requirements of equality of population and the "one person one vote"

requirement is mandated by both State and Federal Constitutions. See Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964); Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 7 L. Ed. 2d 663 (1962); Sweeney v. Notte, 95 R.I. 68, 183 A.2d 296 (1962).

It has been recognized that a state's interest in the orderly regulation of elections in light of the critical role played by political parties in the process of selecting and electing candidates for state and national offices justifies enactment of statutory provisions governing the composition and activities of party committees. Marchioro v. Chaney, 442 U.S. 191, 99 S. Ct. 2243, 60 L. Ed. 2d 816 (1979). Most recently a unanimous Court has upheld a statute of the Commonwealth of Puerto Rico which allows a political party under certain circumstances to fill a vacancy in the Puerto Rican House of Representatives. Rivera-Rodriquez v. Popular Democratic Party, 50 U.S.L.W. 4599 (U.S. June 7, 1982). This holding came in response to a challenge which

asserted that the conferring of such an appointment privilege violated the plaintiffs' First Amendment rights of association as well as their right to equal protection under the laws.

In the instant case, the Rhode Island Legislature, having enacted a reapportionment statute relating to 100 representative districts, found it necessary to adopt an interim appointment procedure in order to ensure that representative district committees could function in an orderly fashion in preparation for the November 1982 election. In some instances members of former representative district committees would no longer reside in the newly reapportioned districts. In some instances the population and geography of the new districts would be so significantly changed that the representation of the former district committee members would be, in the legislative judgment, inadequate. In order to avoid the expense and difficulty of a special election for 100

district committees, the Legislature authorized and empowered the respective party chairmen to appoint in each instance "members of a representative district committee for each representative district." Nothing in the statute required the state chairmen to appoint different members to a district committee under circumstances in which all members of the former committee still resided in the district or in which the population and geographical area had not been significantly changed. In authorizing the state chairmen of the Democratic and Republican Parties to make these appointments, the Legislature was adopting the least intrusive means of guaranteeing an orderly process of endorsements and, at the same time, allowing the chief party officer to conduct the affairs of his respective party.

In passing upon the constitutionality of P.L. 1982, ch. 20, §9, it is not the function of this court to approve or disapprove of the wisdom of the action taken by defendant

Quattrocchi pursuant to the authority reposed in him. The plaintiffs may well complain that the state chairman of the Democratic Party might have reappointed them or some of them to office as members of the Thirteenth Representative District Committee. However, the action of the chairman was not mandated by the statute and essentially represented his individual determination. As in Marchioro v. Chaney, supra, the fact that the state chairman did not choose the alternative course desired by plaintiffs can scarcely be determined to be the responsibility of the State Legislature.

In authorizing the party chairman to appoint members of representative district committees, the Legislature obviously intended to confer upon the chief official of each major party, who in a derivative sense represents all members of the party, the authority to respond to the changed conditions within each of 100 districts. The chairman was not compelled to appoint different people

but obviously was authorized to do so.

We find that this statutory authorization did not constitute an undue burden upon the associational interests of the plaintiffs and other members of the Democratic Pary; and to the extent that such burden was imposed, it was justified by the compelling state interest in reapportioning the General Assembly pursuant to the requirements of the Federal and State Constitutions.

For the reasons stated, this court entered its order reversing the judgment of the Superior Court and remanding the papers in the case to the Superior Court with instructions to enter judgment for the defendants.

Chief Justice Bevilacqua and Justice Shea did not participate.